

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1362 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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J B CHEMICALS

Versus

BABURAO MAHADEV

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Appearance:

MR NV ANJARIA for Petitioner

None present for Respondent

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 29/07/97

ORAL JUDGEMENT

Heard the learned counsel for the petitioner and perused the Sp. C.A..

2. Challenge is made by this Sp. C.A. to the award of the Labour Court dated 31st December 1987, passed in Recovery Application No.New 80/87 (Old 248/85). Under the said award, the recovery application of the respondent-workman has been allowed and the amount of

Rs.7276-50 was computed to be payable to him by the petitioner.

3. Only contention made by the learned counsel for the petitioner is that the respondent-workman has failed to establish the relationship of employer and employee between himself and the petitioner, and as such, the Labour Court has exceeded its jurisdiction in passing the order in his favour.

4. The petitioner has raised the dispute that the workman is not its employee, but a finding of fact has been recorded by the Labour Court and he was held to be employee of the petitioner. The finding of fact recorded in this case cannot be said to be perverse or it cannot be said that the Tribunal has misdirected itself in reading of the material evidence. The counsel for the petitioner contended that the burden to establish this relationship was on the respondent-workman and he has failed to produce any evidence on the record. However, I do not find any justification in this contention. It is true that initial burden lies on the workman, but that burden has been discharged when the workman stated that there is a relationship of employer-employee between the parties and then burden to disprove this relationship lies on the employer. The petitioner-employer was in possession of the best evidence on this point i.e. the evidence of the payment of the salary etc. and by producing the material evidence it could have shown that the respondent-workman was not the employee of the petitioner but he was employee of the J.B. Cotton Seed Industries. This material document has been withheld by the petitioner from the Court, and as such, adverse inference deserves to be drawn. The non-production of this material evidence by the petitioners show that otherwise it had gone against him. So, the petitioner is blameworthy of not producing the material evidence and cannot be permitted to take this technical plea of the burden of proof.

5. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated.

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